

Building Blocks for Effective Housing Elements

Governmental Constraints

Fees and Exactions

Government Code Section 65583(a) requires “An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels...including...fees and other exactions required of developers, and local processing and permit procedures...”.

Housing development is typically subject to two types of fees or exactions:

- permit processing fees for planning and zoning; and
- impact fees or exactions, imposed to defray all or a portion of the public costs related to the development project.

These fees and exactions can impact the cost, and feasibility of housing development and its affordability, and involve issues of private property rights. High planning and site development fees can impact property owners' ability to make improvements or repairs, especially for lower-income households. Development projects are subject to fees and exactions from a growing number of public entities, ranging from special districts to regional agencies. It is important to estimate the cumulative amount of fees housing development will be subject to for development of viable proposals; information about the City or County's fees and exactions is among the most critical. For both processing fees and impact fees, State law specifies procedural and nexus requirements:

- Government Code Section 66020 requires that planning and permit processing fees do not exceed the reasonable cost of providing the service, unless approved by the voters; agencies collecting fees must provide project applicants with a statement of amounts and purposes of all fees at the time of fee imposition or project approval.
- Government Code Section 66000 et. seq. (Mitigation Fee Act) sets forth procedural requirements for adopting, and collecting capital facilities fees and exactions, and requires they be supported by a report establishing the relationship between the amount of any capital facilities fee and the use for which it is collected.

I. REQUISITE ANALYSIS

- Identify and analyze permit processing and planning fees, and development and impact fees and exactions and how they have been established relative to the above statutory requirements, including any in-lieu fees.
- Identify exactions such as land dedication requirements (e.g., streets, public utility and other right-of-ways, easements, parks, open space, etc.) and other exactions imposed on development.
- Describe other sources of public finance used to balance development fees assessed for individual projects. Estimate and analyze total development fees imposed by the city/county by unit type such as typical single family and multifamily development and total cost of fees.
- Include information on how fees are collected, i.e. at the beginning of the approval process, at the time of building permit issuance, or deferred until the project receives certificate of occupancy.
- Identify any policies or efforts to moderate high fee impacts for housing for lower-income households, such as fee waivers, fee deferrals, streamlined fee processing, and consolidated fee schedules.

Topics to Consider In Analyzing Fees and Exactions

As the market conditions and circumstances affecting a jurisdiction's fee structure vary, the analysis should consider a variety of factors to determine the extent to which fees pose a constraint to housing. In the analysis of fees, the jurisdiction could consider the following factors:

- 1) *Funding mechanisms for capital improvement plans.* If the financing of major capital facilities is reliant predominantly on the collection of developer fees, other mechanisms to finance part of these improvements such as development of special districts, or leveraging federal, State and local programs could be considered.
- 2) *Analyze fee trends.* The analysis could examine the amount and rate of cumulative development fees increases over the past five to ten years.
- 3) *Identify the most recent nexus study on which the fees are based.* Factors in the analysis could include the date/relevancy of the most recent study, and what fees were examined.
- 4) *Analyze whether the fee structure incentivizes effective use of services and compact development.* For example, are there differentials for different locations or sizes of housing units within the jurisdiction?

- 5) *Examine Affordable Housing Development Trends.* Determine whether local affordable housing builders are developing within the jurisdiction and whether the amount of fees and exactions are constraining their development decisions or income targeting of affordable housing development.
- 6) *Estimate fees as a portion of overall housing development cost.* Should the analysis show that fees are a significant portion of overall development cost; this could indicate that fees are posing a constraint to the development of housing.
- 7) *Comparison with surrounding jurisdictions.* Are housing development fees in the community competitive with the fees being assessed by neighboring jurisdictions?

Sample Tables

The following are sample tables to assist in organizing critical fee and exaction information. The information provided in the tables should be tailored to the jurisdiction and followed by appropriate analysis. These sample tables are not intended to be a substitute for addressing the analytical requirements described in the statute.

Planning and Development Fees

FEE CATEGORY		FEE AMOUNT	
Planning and Application Fees		Single-Family	Multifamily
Annexation			
Variance			
Conditional Use Permit			
General Plan Amendment			
Zone Change			
Site Plan Review			
Architectural Review			
Planned Unit Development			
Specific Plan			
Development Agreement			
Other			
SUBDIVISION			
Certificate of Compliance			
Lot Line Adjustment			
Tentative Tract Map			
Final Parcel Map			
Vesting Tentative Map			
Other			
ENVIRONMENTAL			
Initial Environmental Study			
Environmental Impact Report			
Negative Declaration			
Mitigated Negative Declaration			
Other			
IMPACT			
Police			
Fire			
Parks			
Water and Sewer			
Sewer Hook-up			
Solid Waste			
Traffic			
Flood			
School			
Special District			
Habitat			
Other			
TOTAL			
Estimated Proportion of Total Development Cost			

**Proportion of Fee in Overall Development Cost for
a Typical Residential Development**

Development Cost for a Typical Unit	Single-Family	Multifamily
Total estimated fees per unit		
Typical estimated cost of development per unit		
Estimated proportion of fee cost to overall development cost per unit		

Nexus Requirements

State law requires establishment of a nexus between the projected development impacts and the public facilities for which impact fees are imposed. Government Code Section 66001(a) of the Mitigation Fee (Act) (Section 66000-66025) requires that any city or county which establishes, imposes, or increases a fee as a condition of development approval do all of the following: (1) identify the purpose of the fee; (2) identify the use to which the fee is to be put; (3) determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and, (4) determine how there is a reasonable relationship between the need for the public facility and the type of development project upon which the fee is imposed.

Government Code Section 66001(b) further requires the locality to determine whether there is a reasonable relationship between the specific amount the fee imposed and the costs of building, expanding, or upgrading public facilities. Such determinations, also known as nexus studies, are made in written form and must be updated whenever new fees are imposed or existing fees are increased.

The Act also requires jurisdictions to segregate fee revenues from other municipal funds and to refund them if they are not spent within five years. Any person may request an audit to determine whether any fee or charge levied by the city or county exceeds the amount reasonably necessary to cover the cost of the service provided (Government Code Section 66006(d)). Under Government Code Section 66014, fees charged for zoning changes, use permits, building permits, and similar processing fees are subject to the same nexus requirements as development fees. Lastly, under Government Code Section 66020, agencies collecting fees must provide project applicants with a statement of the amounts and purposes of all fees at the time of fee imposition or project approval.

KEY IDEAS

II. HELPFUL HINTS

Information regarding the impact of local fees and total typical development costs can be found by contacting local for- and non-profit developers active within the market area. In addition, affordable housing developers can provide insight relating to timing of fee payments and strategies to reduce the overall effect of fees on the cost and supply of housing. Examples include mitigating school impact fees for senior housing, or deferring fees until financing is in place for affordable housing.

To encourage homeowners to invest in repairs and maintenance of existing neighborhoods, the Anaheim instituted a “Home Improvement Holiday Program”, which granted residents a fee waiver for permits, inspections, re-inspections and other activities relating to the regulation of building and construction activities for alterations and additions to single-family residences. As a result of the Program, \$28.3 million in improvements were made to single-family homes and the City's Planning Department issued 3,562 residential building permits.

III. MODEL ANALYSES

[Sample Analysis](#)

[Highlighted Jurisdiction- City of Sacramento](#)

IV. LINKS

[Solano Press Books, “Exactions and Impact Fees in California” Table of Contents](#)

[Pay to Play: Residential Development Fees in California Cities and Counties, 1999](#)

[Affordable Housing Impact Fee Waiver \(Deferral\) Procedures, Bernalillo County, NM](#)

[Metro Area House Prices and Affordability, National Association of Home Builders](#)

[A Planner's Guide to Financing Public Improvements](#)

[California Infrastructure and Economic Development Bank \(I-Bank\)](#)

[City of Anaheim Home Improvement Holiday Program](#)

[HUD's Regulatory Barriers Clearinghouse](#)

[Impact Fees & Housing Affordability: A Guidebook for Practitioners](#)

[City of San Luis Obispo Fee Waiver Program](#)

[City of Sacramento Infill and Affordable Fee Program](#)

Robert W. Burchell, Ph.D., William Dolphin, Mausing ["Size as a Surrogate for Person per Unit to Determine Impact Fees"](#)

Clancy Mullen, AICP, Senior Associate of Duncan Associates, Austin, Texas, for the ["Impact Fees and Housing Affordability"](#) session at the National Conference of the American Planning Association held in Denver on April 1, 2003
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